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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

PUGET SOUNDKEEPER ALLIANCE;
WASTE ACTION PROJECT;
WASHINGTON PUBLIC EMPLOYEES
FOR ENVIRONMENTAL
RESPONSIBILITY; RESOURCES FOR
SUSTAINABLE COMMUNITIES;
CITIZENS FOR A HEALTHY BAY; and
WASHINGTON ENVIRONMENTAL
BALANCE, INC., all Washington non-
profit organizations,

Petitioners

v.

POLLUTION CONTROL HEARINGS
BOARD, a Washington state agency,

Respondent.

No.

PETITION FOR JUDICIAL REVIEW OF
POLLUTION CONTROL HEARINGS
BOARD DECISION

Petitioners Puget Soundkeeper Alliance, Waste Action Project, Washington Public
Employees for Environmental Responsibility, Resources for Sustainable Communities, Citizens
for a Healthy Bay, and Washington Environmental Balance, Inc. (collectively, the "Alliance")
petition for judicial review of action taken by the Pollution Control Hearings Board (the
"Board"). Petitioners allege as follows:

PETITION FOR REVIEW OF POLLUTION
CONTROL HEARINGS BOARD DECISION

- 1

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2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

I. IDENTITY OF PETITIONERS

1.1 Petitioner Puget Soundkeeper Alliance is a regional non-profit organization devoted to environmental protection in the State of Washington. Its mailing address is Puget Soundkeeper Alliance, 4401 Leary Way NW, Seattle, WA 98107.

1.2 Petitioner Waste Action Project is a statewide non-profit organization devoted to environmental protection in the State of Washington. Its mailing address is Waste Action Project, P.O. Box 4832, Seattle, WA 98104.

1.3 Petitioner Washington Public Employees for Environmental Responsibility is the Washington state chapter of a national non-profit organization devoted to environmental protection. Its mailing address is Public Employees for Environmental Responsibility, P.O. Box 2618, Olympia, WA 98507.

1.4 Petitioner Resources for Sustainable Communities is a regional non-profit organization devoted to environmental protection in the State of Washington. Its mailing address is Resources for Sustainable Communities, 1155 North State Street, Suite 623, Bellingham, WA 98225.

1.5 Petitioner Citizens for a Healthy Bay is a regional non-profit organization devoted to environmental protection in the State of Washington. Its mailing address is Citizens for a Healthy Bay, 917 Pacific Avenue, Suite 406, Tacoma, WA 98402.

1.6 Petitioner Washington Environmental Balance, Inc. is a regional non-profit organization devoted to environmental protection in the State of Washington. Its mailing address is Washington Environmental Balance, Inc., 1212 "F" St., Centralia, WA 98531.

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II. IDENTITY OF PETITIONERS' ATTORNEY

2.1 The name and mailing address of the Petitioners' attorney is Richard A. Smith, Smith & Lowney, PLLC, 2317 East John St., Seattle, WA 98112, (206) 860-2883.

III. IDENTITY OF AGENCY WHOSE ACTION IS AT ISSUE

3.1 The name and mailing address of the agency whose action is at issue is the Pollution Control Hearings Board, P.O. Box 40903, Lacey, WA 98504-0903. The Board is a quasi-judicial administrative body established under Ch. 43.21B RCW. The Board is authorized to hear appeals involving the Washington Department of Ecology's issuance of wastewater discharge permits under the National Pollutant Discharge Elimination System ("NPDES") under RCW 43.21B.110. The action in this case is the Findings Of Fact, Conclusions Of Law And Order of the Board in *Puget Soundkeeper Alliance, et. al. v. State of Washington, Department of Ecology*, PCHB Nos. 02-162, 02-163, and 02-164, a copy of which is attached to this Petition as Exhibit A.

IV. IDENTITY OF PARTIES TO ADMINISTRATIVE PROCEEDINGS

4.1 The parties who were parties to the administrative proceedings that led to the agency action at issue are as follows:

4.2 Puget Soundkeeper Alliance, a petitioner in the proceeding below, is a regional non-profit organization devoted to environmental protection in the State of Washington. Its mailing address is Puget Soundkeeper Alliance, 4401 Leary Way NW, Seattle, WA 98107.

4.3 Waste Action Project, a petitioner in the proceeding below, is a statewide non-profit organization devoted to environmental protection in the State of Washington. Its mailing address is Waste Action Project, P.O. Box 4832, Seattle, WA 98104.

1 4.4 Washington Public Employees for Environmental Responsibility, a petitioner in
2 the proceeding below, is the Washington state chapter of a national non-profit organization
3 devoted to environmental protection. Its mailing address is Public Employees for Environmental
4 Responsibility, P.O. Box 2618, Olympia, WA 98507.

5 4.5 Resources for Sustainable Communities, a petitioner in the proceeding below, is a
6 regional non-profit organization devoted to environmental protection in the State of Washington.
7 Its mailing address is Resources for Sustainable Communities, 1155 North State Street, Suite
8 623, Bellingham, WA 98225.

9 4.6 Citizens for a Healthy Bay, a petitioner in the proceeding below, is a regional
10 non-profit organization devoted to environmental protection in the State of Washington. Its
11 mailing address is Citizens for a Healthy Bay, 917 Pacific Avenue, Suite 406, Tacoma, WA
12 98402.

13 4.7 Washington Environmental Balance, Inc., a petitioner in the proceeding below, is
14 a regional non-profit organization devoted to environmental protection in the State of
15 Washington. Its mailing address is Washington Environmental Balance, Inc., 1212 "F" St.,
16 Centralia, WA 98531.

17 4.8 The Washington Department of Ecology, a respondent in the proceeding below, is
18 an "agency" of the State of Washington established under Ch. 43.21 RCW. Ecology is charged
19 by the legislature with the authority to issue NPDES permits. Ecology's mailing address is P.O.
20 Box 47600, Olympia, WA 98504.

21 4.9 The Boeing Company, a petitioner in the proceeding below, is a for-profit
22 corporation doing business in the State of Washington. Its mailing address is P.O. Box 3707 MC
23 13-08, Seattle, WA 98124.

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CONTROL HEARINGS BOARD DECISION

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1 4.10 Snohomish County, a petitioner in the proceeding below, is a political subdivision
2 of the State of Washington. Its mailing address is 3000 Rockefeller Ave., M/S 609, Everett, WA
3 98208.

4 4.11 The Association of Washington Business, an intervenor in the proceeding below, is
5 a business organization that serves as Washington's chamber of commerce. Its mailing address
6 is P.O. Box 658, Olympia, WA 98507.
7

8 V. PETITIONERS' ENTITLEMENT TO JUDICIAL REVIEW

9 5.1 RCW 43.21B.190 provides that "Within thirty days after the final decision and
10 order of the hearings board upon such an appeal has been communicated to the interested parties,
11 such interested party aggrieved by the decision and order of the hearings board may appeal to the
12 superior court."
13

14 5.2 Petitioners here were petitioners below in *Puget Soundkeeper Alliance, et. al. v.*
15 *State of Washington Department of Ecology*, PCHB Nos. 02-162, 02-163, and 02-164. The
16 Findings Of Fact, Conclusions Of Law And Order in that case was issued on August 4, 2003.
17 Petitioners have therefore met the procedural requirements for filing this appeal under RCW
18 43.21B.190 and the Petition is timely.
19

20 5.3 Petitioners challenge the Board's Findings Of Fact, Conclusions Of Law And
21 Order, PCHB Nos. 02-162, 02-163, and 02-164. The Board failed to find that the monitoring
22 requirements of the challenged Permit are insufficient to determine whether authorized
23 discharges cause or contribute to violations of water quality standards or violate narrative water
24 quality effluent limitations. The Board failed to find that the monitoring requirements are
25 insufficient to direct permittees to implement treatment measures, or that, for this reason, the
26 Permit constitutes an impermissible self-regulatory scheme.
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1 5.4 Petitioners, as petitioners in the proceeding below, are aggrieved and substantially
2 prejudiced by the Board's decision that the Permit's requirements are not inadequate or illegal in
3 the manner described in paragraph 5.3. The Board's decision allows regulation of industrial
4 stormwater discharges under the Permit in a manner that will degrade water quality throughout
5 Washington. Petitioners and their individual members will be injured by such degradation of
6 water quality. The Board's decision will set back Petitioners' efforts to advance regulation of
7 stormwater management and to protect the environment. Petitioners' interests were among those
8 that the Board was required to consider when it rendered its decision. A judgment as requested
9 below will substantially eliminate or redress the prejudice caused to Petitioners by the Board's
10 action. Petitioners, therefore, have standing to appeal the Board's decision.
11

12 VI. PETITIONERS' ENTITLEMENT TO RELIEF

13 6.1 Petitioners seek review and relief from the Board's Findings Of Fact, And
14 Conclusions Of Law And Order, and specifically from the Board's failure to find that the
15 Permit's monitoring requirements are inadequate to comply with applicable state and federal
16 law.
17

18 6.2 The Board's holding from which Petitioners seek relief is an erroneous
19 interpretation of the law and/or arbitrary and capricious.
20

21 6.3 For the reasons set forth above, Petitioners are entitled to relief from the Board's
22 Findings Of Fact, Conclusions Of Law And Order.
23

24 VII. REQUESTED RELIEF

25 Having fully set forth the required elements for a Petition for Judicial Review, Petitioners
26 respectfully request the following relief:
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1 1. An order declaring that the monitoring provisions of the underlying Permit are
2 inconsistent with applicable law and overturning the portions of the Board's Findings Of Fact,
3 Conclusions Of Law And Order, and remanding the Permit to the Board and/or the Department
4 of Ecology for reissuance consistent with applicable law;

5 2. An award of litigation expenses under RCW 4.84.340-.360 and/or RCW
6 43.84.067;

7 3. Such other relief as the Court determines is just and reasonable.

8 DATED this 2nd day of September, 2003.

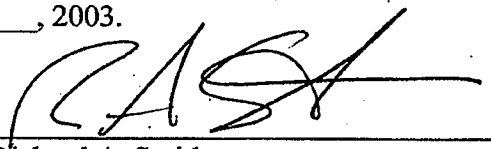
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10 SMITH & LOWNEY, PLLC

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12 By: 

13 Richard A. Smith, WSBA #21788
14 Attorneys for Puget Soundkeeper Alliance,
15 Waste Action Project, Washington Public
16 Employees for Environmental Responsibility,
17 Resources for Sustainable Communities, Citizens
18 for a Healthy Bay, Washington Environmental
19 Balance, Inc.

20 CERTIFICATE

21 I, Richard A. Smith, served this petition for review on all parties of record or their
22 attorneys of record on Sept. 2, 2003.

23 
24 Richard A. Smith